IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 2038 of 2006

Date of Decision: 30.11.2006

Amarjit Kaur & Ors. ...Petitioners

Vs.

Jagtar Singh ...Respondent

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.C.M.Munjal, Advocate,
for the petitioners.

Mr.Sunil Sharma, Advocate,
for the respondent.

Vinod K.Sharma, J. (Oral)

Present revision petition has been filed against an order passed by the learned Additional District Judge, Jalandhar, vide which the appeal filed by the plaintiff-appellant was disposed of on the basis of the statement alleged to have been made by petitioner No.3 herein.

The plaintiff had filed a suit for declaration challenging the sale deed executed by the petitioners by claiming the property to be ancestral property. Along with the said suit an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure was made to the learned Trial Court,

which was dismissed against which the plaintiff-respondent went in appeal.

Instead of deciding the appeal on merit, the learned Additional District Judge has recorded an order to the effect that petitioner No.3 herein had made a statement that he would not alienate the property. Said statement was alleged to have been made in the presence of his Advocate. However, said statement was not signed by petitioner No.3. In spite of this, the learned Additional District Judge, instead of proceeding with the matter on merit, disposed of the appeal in view of the statement made by petitioner No.3 by observing that the parties would be bound by the said statement.

In view of the fact that petitioner No.3 had refused to sign the statement, he was called to appear after lunch but he did not appear in the court. In spite of this, learned Additional District Judge maintained the order of disposal of appeal on the statement made by petitioner No.3. It may be noted that besides petitioner No.3 there were other appellants and therefore, it was not open to the learned Additional District Judge to dispose of the appeal merely on the basis of alleged statement which was not signed.

Learned counsel for the petitioners contends that it was not open to the learned lower Appellate Curt to force a party to make a statement. Once the party had refused to own the statement, it was incumbent upon the learned Additional District Judge to decide the appeal on merit. Learned counsel for the petitioners further pointed out that the counsel for the petitioners was not present when the alleged statement was said to have been made. In view of this the impugned order cannot be sustained.

Consequently, the revision is allowed. The impugned order is set aside and the case is remanded back to the learned Additional District

Judge, Jalandhar for disposal of the appeal on merit.

The parties through their counsel are directed to appear before the learned Additional District Judge, Jalandhar on 15.12.2006.

(Vinod K.Sharma)
30.11.2006 Judge
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